

AMENDED IN ASSEMBLY AUGUST 11, 1997

AMENDED IN ASSEMBLY JULY 10, 1997

AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 536

Introduced by Senator Mountjoy
(Coauthor: Senator Polanco)

February 24, 1997

An act to amend Sections 6601.3, 6601.5, ~~6604~~ 6602, 6609.1, 6609.2, and 6609.3 of, *to amend, repeal, and add Section 6604 of*, and to add Section 6602.5 to, the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 536, as amended, Mountjoy. Sexually violent predators.

(1) Under existing law, in effect until January 1, 1998, the Board of Prison Terms may order that a person who is screened as a sexually violent predator and referred to the State Department of Mental Health for full evaluation remain in custody for no more than 45 days.

This bill would delete the repeal date of this provision and would authorize the Director of Corrections to refer the person to the State Department of Mental Health for evaluation at a date that is less than 6 months prior to the inmate's scheduled release date, and the Board of Prison Terms to order imposition of a temporary hold on the inmate for up to 3 working days pending a probable cause hearing by the board, under specified circumstances. If probable cause is found at the hearing *that the inmate is a sexually violent*

predator, the bill would authorize the board to order that the person remain in custody for full evaluation by the State Department of Mental Health, as described above, for evaluation of the case by the county's designated counsel, and for a court hold, as specified. The bill would provide that no person may be placed in a state hospital pursuant to these provisions until there has been a determination that there is probable cause to believe that the person is ~~likely to engage in sexually violent predatory criminal behavior~~ *a sexually violent predator*.

~~The bill also~~

(2) Existing law requires a judge of the superior court to review any petition for commitment of a person determined to be a sexually violent predator by the State Department of Mental Health pursuant to the provisions in (1) above, and to determine whether there is probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release.

This bill instead would require the judge to determine whether there is probable cause to believe that the individual named in the petition is a sexually violent predator. The bill would specify that this provision does not constitute a change in, but is declaratory of, existing law and consistent with current practice.

(3) Existing law requires a person who is determined to be a sexually violent predator to be committed for 2 years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility, as specified.

*This bill would provide, until January 1, 1999, that the ~~term~~ 2-year period of commitment of ~~any person committed to the State Department of Mental Health~~ as a sexually violent predator commences on the date upon which the court issues the initial order of the commitment and shall not be reduced by any time spent in ~~custody~~ *a secure facility* prior to the order of commitment, ~~nor shall any credits be applicable~~. The bill would specify that this provision does not constitute a change in, but is declaratory of, existing law.*

~~(2)~~

(4) Existing law requires the State Department of Mental Health to notify local law enforcement officials 15 days prior to the scheduled release of a sexually violent predator.

This bill instead would require the department to notify local law enforcement officials 15 days prior to the submission to a court of its recommendation for community outpatient treatment for any person committed as a sexually violent predator or its recommendation not to pursue recommitment of the person.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6601.3 of the Welfare and
2 Institutions Code is amended to read:
3 6601.3. If the inmate was received by the
4 Department of Corrections with less than nine months of
5 his or her sentence to serve, or if the inmate's release date
6 is modified by judicial or administrative action, the
7 director may refer the person to the State Department of
8 Mental Health for evaluation in accordance with this
9 section at a date that is less than six months prior to the
10 inmate's scheduled release date, and the Board of Prison
11 Terms may order imposition of a temporary hold on the
12 inmate for up to three working days pending a probable
13 cause hearing by the board. If probable cause is found at
14 the hearing, ~~the board may order that a person referred~~
15 ~~to the State Department of Mental Health pursuant to~~
16 ~~subdivision (b) of Section 6601 that the inmate is a~~
17 *sexually violent predator, the board may order the person*
18 *to remain in custody for no more than 45 days for full*
19 *evaluation pursuant to subdivisions (c) to (i), inclusive,*
20 *of Section 6601, for evaluation of the case by the county's*
21 *designated counsel, and for the court hold imposed*
22 *pursuant to Sections 6601.5 and 6602, unless his or her*
23 *scheduled date of release falls more than 45 days after*
24 *referral.*
25 SEC. 2. Section 6601.5 of the Welfare and Institutions
26 Code is amended to read:

1 6601.5. In cases where an inmate's prison term, return
2 to custody, or temporary hold pursuant to Section 6601.3
3 will expire before a probable cause hearing is conducted
4 pursuant to Section 6602, the agency bringing the petition
5 may request an urgency review pursuant to this section.
6 Upon that request, a judge of the superior court shall
7 review the petition and determine whether the petition
8 states or contains sufficient facts that, if true, would
9 constitute probable cause to believe that the individual
10 named in the petition is likely to engage in sexually
11 violent predatory criminal behavior upon his or her
12 release. If the judge determines that the petition, on its
13 face, supports a finding of probable cause, the judge shall
14 order that the person be detained in a secure facility until
15 a hearing can be held pursuant to Section 6602. The
16 probable cause hearing provided for in Section 6602 shall
17 be held within 10 calendar days of the date of the order
18 issued by the judge pursuant to this section.

19 SEC. 3. *Section 6602 of the Welfare and Institutions*
20 *Code is amended to read:*

21 6602. A judge of the superior court shall review the
22 petition and shall determine whether there is probable
23 cause to believe that the individual named in the petition
24 ~~is likely to engage in sexually violent predatory criminal~~
25 ~~behavior upon his or her release~~ *a sexually violent*
26 *predator*. The person named in the petition shall be
27 entitled to assistance of counsel at the probable cause
28 hearing. If the judge determines there is not probable
29 cause, he or she shall dismiss the petition and any person
30 subject to parole shall report to parole. If the judge
31 determines that there is probable cause, the judge shall
32 order that the person remain in custody in a secure
33 facility until a trial is completed and shall order that a trial
34 be conducted to determine whether the person is, by
35 reason of a diagnosed mental disorder, a danger to the
36 health and safety of others in that the person is likely to
37 engage in acts of sexual violence upon his or her release
38 from the jurisdiction of the Department of Corrections or
39 other secure facility.



1 SEC. 4. Section 6602.5 is added to the Welfare and
2 Institutions Code, to read:

3 6602.5. No person may be placed in a state hospital
4 pursuant to the provisions of this article until there has
5 been a determination pursuant to Section 6601.3 or 6602
6 that there is probable cause to believe that the individual
7 ~~named in the petition is likely to engage in sexually~~
8 ~~violent predatory criminal behavior. is a sexually violent~~
9 ~~predator.~~

10 ~~SEC. 4.~~

11 SEC. 5. Section 6604 of the Welfare and Institutions
12 Code is amended to read:

13 6604. (a) The court or jury shall determine whether,
14 beyond a reasonable doubt, the person is a sexually
15 violent predator. If the court or jury is not satisfied
16 beyond a reasonable doubt that the person is a sexually
17 violent predator, the court shall direct that the person be
18 released at the conclusion of the term for which he or she
19 was initially sentenced, or that the person be
20 unconditionally released at the end of parole, whichever
21 is applicable. If the court or jury determines that the
22 person is a sexually violent predator, the person shall be
23 committed for a period of two years to the State
24 Department of Mental Health for appropriate treatment
25 and confinement in a secure facility designated by the
26 Director of Mental Health, and the person shall not be
27 kept in actual custody longer than two years unless a
28 subsequent extended commitment is obtained from the
29 court incident to the filing of a new petition for
30 commitment under this article or unless the term of
31 commitment changes pursuant to subdivision (e) of
32 Section 6605. The two-year period of commitment shall
33 commence on the date upon which the court issues the
34 ~~initial order of the commitment pursuant to Section 6604~~
35 ~~this section.~~ The two-year period shall not be reduced by
36 any time spent in custody prior to the order of
37 commitment, nor shall any credits be applicable to
38 ~~reduce the two-year period. Time in a secure facility prior~~
39 ~~to the order of commitment. For subsequent extended~~
40 ~~commitments, the term of commitment shall be from the~~

1 *date of the termination of the previous commitment.*
2 *Time spent on conditional release shall not count toward*
3 *the two-year term of commitment, unless the person is*
4 *placed in a locked facility by the conditional release*
5 *program, in which case the time in a locked facility shall*
6 *count toward the two-year term of commitment. The*
7 *facility shall be located on the grounds of an institution*
8 *under the jurisdiction of the Department of Corrections.*

9 *(b) This section shall remain in effect only until*
10 *January 1, 1999, and as of that date is repealed, unless a*
11 *later enacted statute, that is enacted before January 1,*
12 *1999, deletes or extends that date.*

13 ~~SEC. 5.~~

14 *SEC. 6. Section 6604 is added to the Welfare and*
15 *Institutions Code, to read:*

16 *6604. (a) The court or jury shall determine whether,*
17 *beyond a reasonable doubt, the person is a sexually*
18 *violent predator. If the court or jury is not satisfied*
19 *beyond a reasonable doubt that the person is a sexually*
20 *violent predator, the court shall direct that the person be*
21 *released at the conclusion of the term for which he or she*
22 *was initially sentenced, or that the person be*
23 *unconditionally released at the end of parole, whichever*
24 *is applicable. If the court or jury determines that the*
25 *person is a sexually violent predator, the person shall be*
26 *committed for a period of two years to the State*
27 *Department of Mental Health for appropriate treatment*
28 *and confinement in a secure facility designated by the*
29 *Director of Mental Health, and the person shall not be*
30 *kept in actual custody longer than two years unless a*
31 *subsequent extended commitment is obtained from the*
32 *court incident to the filing of a new petition for*
33 *commitment under this article or unless the term of*
34 *commitment changes pursuant to subdivision (e) of*
35 *Section 6605. Time spent on conditional release shall not*
36 *count toward the two-year term of commitment, unless*
37 *the person is placed in a locked facility by the conditional*
38 *release program, in which case the time in a locked*
39 *facility shall count toward the two-year term of*
40 *commitment. The facility shall be located on the grounds*

1 *of an institution under the jurisdiction of the Department*
2 *of Corrections.*

3 *(b) This section shall become operative on January 1,*
4 *1999.*

5 SEC. 7. Section 6609.1 of the Welfare and Institutions
6 Code is amended to read:

7 6609.1. (a) When the State Department of Mental
8 Health is considering a recommendation to the court for
9 community outpatient treatment for any person
10 committed as a sexually violent predator, it shall notify
11 the sheriff or chief of police, or both, and the district
12 attorney, who has jurisdiction over the community in
13 which the person may be released. The notice shall be
14 given at least 15 days prior to the department's
15 submission of that recommendation to the court and shall
16 include the name of the person who is scheduled to be
17 released and the community in which civil commitment
18 was established.

19 (b) When the State Department of Mental Health is
20 considering a recommendation not to pursue
21 recommitment of any person committed as a sexually
22 violent predator, it shall provide written notice of that
23 release to the sheriff or police chief, or both, and to the
24 district attorney, who has jurisdiction over the
25 community in which civil commitment was established.
26 The notice shall be made at least 15 days prior to the date
27 on which the notification is to be forwarded from the
28 department to the court that will consider the
29 department's recommendation not to pursue the
30 extension of the civil commitment.

31 Those agencies receiving the notice referred to in this
32 subdivision shall have 15 days from receipt of the notice
33 to provide written comment to the department
34 regarding the impending release. Those comments shall
35 be considered by the department, which may modify its
36 decision regarding the community in which the person is
37 scheduled to be released, based on those comments.

38 (c) If the court orders the immediate release of a
39 sexually violent predator, the department shall notify the
40 sheriff or chief of police, or both, and the district attorney,

1 who has jurisdiction over the community in which the
2 person is scheduled to be released at the time of release.

3 (d) The notice required by this section shall be made
4 whether or not a request has been made pursuant to
5 Section 6609.

6 (e) The time limits imposed by this section are not
7 applicable where the release date of a sexually violent
8 predator has been advanced by a judicial or
9 administrative process or procedure that could not have
10 reasonably been anticipated by the State Department of
11 Mental Health and where, as the result of the time
12 adjustments, there is less than 30 days remaining on the
13 commitment before the inmate's release, but notice shall
14 be given as soon as practicable. In no case shall notice
15 required by this section to the appropriate agency be
16 later than the day of release. If, after the 45-day notice is
17 given to law enforcement and to the district attorney
18 relating to an out-of-county placement, there is change of
19 county placement, notice to the ultimate county of
20 placement shall be made upon the determination of the
21 county of placement.

22 ~~SEC. 6.~~

23 SEC. 8. Section 6609.2 of the Welfare and Institutions
24 Code is amended to read:

25 6609.2. (a) When any sheriff or chief of police is
26 notified by the State Department of Mental Health of its
27 intention to make a recommendation to the court
28 concerning the disposition of a sexually violent predator
29 pursuant to subdivision (a) or (b) of Section 6609.1, that
30 sheriff or chief of police may notify any person designated
31 by the sheriff or chief of police as an appropriate recipient
32 of the notice.

33 (b) A law enforcement official authorized to provide
34 notice pursuant to this section, and the public agency or
35 entity employing the law enforcement official, shall not
36 be liable for providing or failing to provide notice
37 pursuant to this section.

38 ~~SEC. 7.~~

39 SEC. 9. Section 6609.3 of the Welfare and Institutions
40 Code is amended to read:



1 6609.3. At the time a notice is sent pursuant to
2 subdivision (a) or (b) of Section 6609.1, the sheriff, chief
3 of police, or district attorney so notified shall also send a
4 notice to persons described in Section 679.03 of the Penal
5 Code who have requested a notice, informing those
6 persons of the fact that the person who committed the
7 sexually violent offense may be released, together with
8 information identifying the court that will consider the
9 conditional or unconditional release. When a person is
10 approved by the court to be conditionally released, notice
11 of the community in which the person is scheduled to
12 reside shall also be given only if it is (1) in the county of
13 residence of a witness, victim, or family member of a
14 victim who has requested notice, or (2) within 25 miles
15 of the actual residence of a witness, victim, or family
16 member of a victim who has requested notice. If, after
17 providing the witness, victim, or next of kin with the
18 notice, there is any change in the release status or the
19 community in which the person is to reside, the sheriff,
20 chief of police, or district attorney shall provide the
21 witness, victim, or next of kin with the revised
22 information.

23 In order to be entitled to receive the notice set forth in
24 this section, the requesting party shall keep the sheriff,
25 chief of police, and district attorney who were notified
26 under Section 679.03 of the Penal Code, informed of his
27 or her current mailing address.

28 ~~SEC. 8.~~

29 *SEC. 10. The Legislature finds and declares that*
30 *Section 3 of this act, which amends Section 6602 of the*
31 *Welfare and Institutions Code, does not constitute a*
32 *change in, but is declaratory of, existing law and*
33 *consistent with current practice.*

34 *SEC. 11. The Legislature finds and declares that the*
35 *provisions of Article 4 (commencing with Section 6600)*
36 *of Chapter 2 of Part 2 of Division 6 of the Welfare and*
37 *Institutions Code establish a civil mental health*
38 *commitment for a period of two years for persons found*
39 *to be sexually violent predators and that, consistent with*
40 *a civil mental health commitment, the period of*

1 ~~commitment begins when the order of commitment is~~
2 ~~made~~—and credits that may reduce a term of
3 imprisonment are not applicable. Accordingly, the
4 Legislature finds and declares that Section 4 5 of this act,
5 which amends Section 6604 of the Welfare and
6 Institutions Code, does not constitute a change in, but is
7 declaratory of, existing law.

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